

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

\*02 SEP 18 AM 8 31

IN RE: APPLICATION OF BROADBAND  
INNOVATIONS, LLC FOR A  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY

DOCKET NO. 02-00819  
TENNESSEE REGULATORY AUTHORITY  
DOCKET ROOM

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**REPLY OF AENEAS TO OBJECTION TO PETITION TO INTERVENE**

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On August 13, 2002, Aeneas Internet Services, Inc. ("Aeneas") filed a Petition to Intervene in the above-captioned proceeding which is an application by Broadband Innovations, LLC ("Broadband") for a certificate of convenience and necessity to operate as a competing, local exchange carrier in Tennessee.

On August 29, 2002, Broadband filed an objection to the Petition, arguing that Aeneas had not stated sufficient facts to demonstrate that the "legal rights, duties, privileges, immunities or other legal interests of Aeneas may be determined in this proceeding." Broadband also objects because the Petition filed by Aeneas alleges that Broadband apparently intends to enter into an agreement with the Jackson Energy Authority ("JEA") so that JEA can offer telecommunications services. Broadband denies that any such agreement presently exists but argues that, if and when JEA and Broadband enter into such an agreement, Broadband will seek TRA approval, pursuant to T.C.A. § 7-52-103(d), and that Aeneas can intervene in that proceeding instead of this one.

Broadband's objections to the Petition to Intervene simply ignore the fact that, as a potential competitor, Aeneas has a cognizable legal interest in ensuring Broadband will fully comply with the "statutes, rules and orders of the Authority." Petition. at 1. Thus, Aeneas intends to participate in this proceeding to determine (1) whether Broadband has the managerial,

technical, and financial qualifications to provide telecommunications services,<sup>1</sup> (2) the nature of the relationship between Broadband and the Jackson Energy Authority ("JEA")<sup>2</sup> and (3) whether Broadband has complied with the requirements of T.C.A. § 7-52-401 *et seq.* and § 7-52-103(d).

The right to intervene in a proceeding such as this is guaranteed by statute, T.C.A. § 4-5-310(b). For that reason, the TRA has never, to counsel's knowledge, denied a timely petition to intervene filed by a regulated carrier alleging an interest in the proceedings. Aeneas is clearly entitled to intervene and participate as a party in this proceeding.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: 

Henry Walker  
414 Union Street, Suite 1600  
P.O. Box 198062  
Nashville, Tennessee 37219  
(615) 252-2363

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<sup>1</sup> According to the attached news report, the telephone service at Broadband's office has been disconnected. Furthermore, the one employee identified by Broadband as a telecommunications engineer, Mr. Robert Williams, is a former employee of Aeneas and, by the terms of his employment contract with Aeneas, is prohibited from working for a competing carrier until April, 2004. See attached letter.

<sup>2</sup> Although Broadband states there is "no agreement" at this time with JEA, it appears from recently published news stories (see attached) that JEA intends to enter into contracts with other parties so that JEA can provide telecommunications services to customers. Broadband is the only potential contractor cited in the article. Such an arrangement would appear to fall within the parameters of T.C.A. § 7-52-103(d) and would require TRA approval. Absent such a contractual relationship with JEA, it is not clear whether Broadband has the capability to offer the telecommunications services described in the carrier's application.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was served on the parties of record, via hand-delivery, overnight delivery or U.S. Mail, postage prepaid, addressed as follows on this 18<sup>th</sup> day of September, 2002:

Patrick D. Cooper, Esq.  
Early, Lennon, Crocker & Bartosiewicz  
900 Comercia Building  
Kalamazoo, Michigan 49007-4752

  
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Henry Walker

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## Jackson OKs rules for new fiber optic installation

By GARY GRAY  
ggray@jackson.sun  
Sep 4 2002

Vote puts city in competition with private sector, critics say

Dale Wilson confronted the Jackson City Council again on Tuesday, questioning a newly formed company that could profit from Jackson Energy Authority's new telecommunications venture.

Wilson - who led a failed petition drive in the spring to fight JEA's entry into telecommunications - requested that the city withdraw its ordinance to issue franchise agreements to fiber optic networks. But the council unanimously approved the move after Wilson finished speaking.

The ordinance, passed Tuesday on a second reading, clears the way for fiber optic, cable and other communications companies and their contractors to dig up city streets and hang wires on telephone poles to provide service to the public.

"We find it interesting that the recipients of these franchises - if we may assume it is Broadband Innovations, LLC, owned by Curtis Graves, Ted Nelson and Chuck Clark - are known insiders and already enjoy excessive access to the city treasury," Wilson said. "Also, we find no record of the city advertising the opportunity for private citizens."

Broadband Innovations filed July 25 with the Tennessee Regulatory Agency to compete for local telecommunications services.

Jackson Mayor Charles Farmer refused comment on Wilson's accusation. Councilman David Cisco also refused comment.

"As far as Dale Wilson is concerned, I have no comment," Cisco said.

On May 7, John Williams, JEA president and CEO, told the council "this system is going to be capable of delivering the telephone service to our customers. That's going to be delivered by another private venture - private local investors, Mr. Curtis Graves," Williams said at the meeting. "He will be our partner."

JEA plans to use its existing infrastructure - underground and telephone lines - to route fiber optics from a central control center to homes and businesses, a process known in the industry as fiber-to-the-home, or FTTH. Customers will pay JEA for services and JEA will collect revenues from companies such as Broadband Innovations who can install transponders and other hardware at the

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center, or "head end," that allow for the transmission of signals to the home.

Though the plan has since changed slightly, JEA's 2002 Broadband Business Plan, filed in January with the state comptroller, shows \$53 million in "long-term borrowings." The proposed cash flow statement also shows a \$3 million investment by JEA and \$3 million by an "investment group." The total approximately equals the \$60 million the city has guaranteed the utility to jump start its telecommunications business.

But the statement also shows "payments of dividends to investment group" starting at about \$324,000 in year four of operation. That amount grows each year for the next six years to total about \$14 million.

"We think this is quite a lucrative deal for three wealthy men and should not be guaranteed by the property of Jackson's working class homeowners," Wilson said.

The three-member company Broadband Innovations lists its address as 176 West University Parkway, Suite F. The telephone number listed on the application has been temporarily disconnected, according to BellSouth customer service.

Clark and Nelson were not available for comment. But Graves said the intent to form a partnership when and if JEA did enter the business was old news, and that this is his first working relationship with Clark and Nelson.

Clark owns and operates Metro Waste, a company that contracts with the city of Jackson to bale waste and recycle items for about \$2 million a year. Nelson was president of railway supply company Touchstone Inc. He is currently a Jackson-based entrepreneur who is a partner in Mill Masters Inc., a company that makes equipment for the automotive industry. Graves, who said he is retired, was the former owner of Digital Telecommunications Inc., a company that manufactured telephone equipment.

"I'm going to say this once," Graves said. "If it's necessary for me to get out of this thing to help Jackson, Tennessee, get a high-tech network, then I'll get out. I talked with JEA about two years ago about this. Jonathan Harlan (owner of Aeneas Internet & Telephone) was going to join on, but he pulled out. I had never dealt with Chuck Clark or Ted Nelson in my life. But we got together and talked about the fact that we had the expertise to do this."

Harlan, a former Madison County commissioner, has filed a suit against the city of Jackson and JEA. The suit claims that JEA is in violation of its charter by acquiring "appropriations by the city of Jackson or any other municipality, the state, or any political subdivision to carry out its purpose." The suit also claims the city has violated the Tennessee Constitution by not letting citizens decide in a referendum whether they supported a taxpayer-backed revenue bond.

"We were never invited to participate in anything," Harlan said. "So we didn't pull out of anything. John Williams promised that JEA would not compete with local businesses. I trusted them."

Section 10 of of JEA's charter states the utility "shall provide for competitive bidding."

But no record of legal statements announcing bids for work with JEA's telecommunications business was found at any of Jackson's newspapers - The Jackson Sun, Metro Forum or thecityNEWS.

Williams said the business plan has been re-worked since January to reflect a change in its payments to investment groups. No contracts with other companies are in place at this time, and the new plan will not have "equity" partners - partners who share revenues with the utility, Williams said. He also said JEA would ask for bids from telephone providers - a service offered by Broadband Innovations - soon.

"Yes, the majority of that investment was to be with private investors," Williams said. "But that's changed. We updated the plan in May, and it was approved by the comptroller in June. We'll contract out the work."

In May, the council approved the \$60 million, city-backed revenue bond for JEA to provide the area with cable, fiber optic and high-speed Internet access. Wilson started a petition to send the matter to a referendum but fell well short of the needed signatures. Larry Lowrance has started another petition and has until Oct. 13 to gather about 5,000 signatures to put the matter to vote.

- Gary Gray, (731) 425-9880

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**PAUL F. RICE**  
**115 Old Humboldt Rd., Jackson, TN 38305 ph (731) 664-2168**

August 30, 2002

Mr. Curtis Graves  
Broadband Innovations, LLC  
PO Box 10217  
Jackson, TN 38305

RE: Employee Robert Williams

Dear Mr. Graves,

This letter is written to advise the ownership of Broadband Innovations that former Aeneas employee Robert Williams is bound by a confidentiality and non-compete agreement covering any business which would compete with the business of Aeneas or approach any of Aeneas' customers. This agreement runs for two years after he left Aeneas in April of this year. Please note that state law gives Aeneas certain rights to enforce this agreement, including seeking treble damages and disgorgement of profits from anyone that induces him to breach those agreements.

We are advised that Mr. Williams is violating this agreement. I trust you will take whatever steps are necessary to make sure Broadband Innovations does not facilitate further breach of the agreement.

Sincerely,



Paul F. Rice

# **Employee Handbook**

of



**Internet Services & Communications**

## **Company Policy**

July 31, 2000



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## AENEAS

### WELCOME ABOARD!

Welcome to Aeneas Internet Services. We are proud that you chose to accept a position with our company. We are a young and upcoming company, formed in 1995. From humble beginnings of sharing office space with the Harlan Insurance Company we experienced rapid growth and moved into our present office at 301 South Church Street, Jackson, TN 38301 in December 1999. This building, by the way, was the old 7-Up Bottling Company building, originally built in the 1930s, and was almost totally renovated by Jonathan Harlan and his brother, Tom Harlan.

Always remember that you are representing Aeneas Internet Services and/or Aeneas Communications at all times. Please conduct yourself accordingly; this is your company, too! Upon acceptance of employment you will be on a 90-day probationary period. Our customers are the only reason you are here. Rudeness, being un-cooperative, and/or any use of abusive or obscene language will not be tolerated for any reason.

We hope your stay at Aeneas Internet Services is a long, pleasant and prosperous one!

### Confidentiality Agreement

During your employment you will not, directly or indirectly, engage in or have financial interest in any business, which would compete with the business of Aeneas. You will hold confidential any information pertaining to the business of Aeneas. This includes, but is not limited to, the company's financial information, its customer base, trade secrets, relationship with its contractors, customers or suppliers as well as opportunities for new or developing business. After your employment, for a period of two (2) years, you will not engage in any business which would compete with the business of Aeneas or approach any of Aeneas customers.

Aeneas reserves its right to bring action to enforce this agreement. In the event that it is deemed necessary to bring such action, the prevailing party shall be entitled to recover all attorney's fees and cost from the non-prevailing party.

I, Robert R. Williams, Jr. have read Aeneas Internet Services and Communication Company Policy Employee Handbook. I understand and agree with the rules and policies. I also understand that there will be changes and/or additions to these rules as the Company grows and changes.

Signature: Robert R. Williams, Jr. Date: 8/28/01